



January 11, 2001

Ms. Lamis A. Safa
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-0110

Dear Ms. Safa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143083.

The City of Houston (the "city") received a request for information related to a specified criminal prosecution and to techniques used to investigate controlled substance offenses. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. You have submitted information responsive in whole to a portion of the request, and a representative sample of information responsive to other requested information.¹ We have considered the exceptions you claim and reviewed the submitted information.

You indicate that responsive photographs and videotapes are not in the possession of the city but are in the custody of the federal government. Generally, the Public Information Act does not require a governmental body to obtain information that it does not own or have a right of access to. *See, e.g.,* Open Records Decision No. 445 (1986). Assuming that the department does not now have a right of access to the subject tapes and photographs, it need not produce that information in response to this request.

Section 552.108(a)(1) of the Government Code provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if the release of the information would interfere with the detection, investigation, or prosecution of crime. We generally presume that

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the detection, investigation, or prosecution of crime. We generally presume that section 552.108(a)(1) excepts information that relates to a pending or ongoing investigation or prosecution. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). You relate that the information submitted as exhibits 2 and 3 relates to an ongoing criminal prosecution. We conclude that this information may generally be withheld under section 552.108(a)(1) of the Government Code.

Note, however, that "basic information" is not excepted by section 552.108. *See* Gov't Code 552.108(c). We believe such basic information refers to the "front page" information held to be public in *Houston Chronicle* In Open Records Decision No. 127 (1976) this office summarized the types of information considered to be basic information. This information includes a detailed description of the offense, time and location of the crime, identity of persons arrested, identity of the complainant and identity of the investigating officers. This basic information must be released, and the remaining information in exhibits 2 and 3 may be withheld under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) of the Government Code provides that an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from public disclosure if release of the information would interfere with law enforcement or prosecution. This office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibits a pattern that reveals investigative techniques, information is excepted under section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). To claim this exception, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision Nos. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980). You indicated that release

of the information submitted as exhibit 4 would compromise the safety and effectiveness of police investigations by making public previously undisclosed investigation techniques and other information which would reveal the types of cases particular officers are assigned to. Based on the representations presented we conclude that the information submitted as exhibit 4 may be withheld under section 552.108(b)(1) of the Government Code.

Since the above discussion resolves this request, we do not address your arguments raised under other sections of the Government Code other than to note that section 552.103 does not except "basic" information about a crime or arrest. *See* Open Records Decision No. 362 (1983).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 143083

Encl: Submitted documents

cc: Mr. Neal Davis
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(w/o enclosures)